

**Actual Innocence Clinic
The University of Texas School of Law
Eighth Annual Report
Fiscal Year 2012-2013
(September 1, 2012 – August 31, 2013)**

I. Who We Are

In cooperation with the University of Texas School of Law, the Texas Center for Actual Innocence (hereinafter “TCAI”), a non-profit, tax-exempt corporation, operates the Actual Innocence Clinic (hereinafter “the clinic”) at the law school. Marjorie I. Bachman, Katherine W. Dawson, Tiffany J. Dowling and E.G. "Gerry" Morris comprise the Board of Directors of the Texas Center for Actual Innocence. Ms. Bachman is a full-time criminal defense practitioner and former student of the clinic. Ms. Dawson is lecturer with the University of Texas Department of Journalism. She is also the daughter of the late Robert O. Dawson who helped found the clinic and TCAI. Ms. Dowling is currently the Clinical Instructor/Director for the clinic and a former student of the clinic. Mr. Morris is board certified in criminal law and maintains a full-time criminal defense practice.

The clinic currently has one full-time employee. Ms. Dowling serves as the clinic’s Clinical Instructor/Director. The clinic also employs an Administrator, Theodore Magee, whose time is split between the Actual Innocence Clinic and another law school clinic.

II. What We Do-Services Provided

a. Client Services

i. Actual Innocence Case Review, Investigation and Litigation

The clinic uses a strict definition of "actual innocence." The clinic defines "actual innocence" in two ways. First, the inmate did not engage in the conduct for which they were convicted, nor did they participate with others in the conduct. This definition excludes general defenses and claims of legal justification, such as self-defense, defense of third persons, duress or legal insanity. The second definition of "actual innocence" includes cases where the offense did not occur, for example, false allegations of sexual abuse.

The clinic developed this narrow definition of "actual innocence" to focus the organization's services on those situations in which there is little or no doubt the inmate is morally as well as legally innocent of the offense for which he or she was convicted. This preserves the moral persuasion of innocence claims, which can be a powerful force in obtaining exoneration, and prevents the dilution of that moral persuasion which arises with the litigation of doubtful claims.

The clinic utilizes a rigorous screening process to identify cases that meet the criteria described above. The purpose of the screening process is to determine (1) what evidence exists to prove innocence and (2) whether that evidence is sufficient to prevail on an actual innocence claim.

The Clinical Instructor/Director reads all incoming mail. Upon receipt of a letter from an incarcerated individual, the Clinical Instructor/Director determines whether the letter, on its face, makes a claim of actual innocence. If an inmate requests assistance with a legal issue other than

innocence, the Administrator prepares a letter explaining that the request is outside the scope of the clinic's services and refers the inmate to another agency, if appropriate.

If the inmate's letter makes a basic claim of innocence, the Clinical Instructor/Director immediately sends the inmate: 1) a letter of introduction explaining the screening and investigation process, 2) an authorization form and 3) a fourteen-page questionnaire designed to gather information about the case and the inmate's claim of innocence. Upon receiving the completed questionnaire, the Clinical Instructor/Director screens the questionnaire to confirm that the inmate is making a claim of actual innocence. If the inmate is not making a claim of actual innocence the Administrator prepares a letter explaining that the request is outside the scope of the clinic's services and refers the inmate to another agency, if appropriate. If the inmate is making a claim of actual innocence, the case is placed on a waiting list to be assigned to a student attorney for investigation. Case assignments are made at the beginning of each semester. In the investigation phase, students utilize computer-aided research to locate information on the factual and legal history of the case. Students obtain the appellate history, appellate opinions, writ history and any news articles related to the inmate's case. Students prepare memos using information found during the initial investigation process. Students then present this information to the Director for discussion and to determine whether the case should be closed or remain open for further investigation.

If the case remains open for further investigation, students then obtain records related to the case, such as the district clerk's file, the reporter's record and investigative files. After reviewing these documents, the student then presents the case to the Director and the clinic students for consideration and discussion. If the Director and class vote to continue investigating the case, students then interview witnesses, interview the inmate in his or her unit and locate the

evidence necessary for litigation. After completing investigation of the case, the Director and class then vote again on whether the evidence is sufficient to proceed to litigation.

b. Teaching and Student Development

For law students, this course consists of a classroom component and a skills/casework component. Law students receive three hours of law school credit for the classroom component and three hours of law school credit for the skills/casework component, for a total of six hours of law school credit. Journalism students received three hours of credit from the School of Journalism for both the skills/casework and classroom components of the course. The program is designed to give students the chance to:

- Develop analytical and research skills in real case scenarios;
- Improve business communication and legal writing skills;
- Develop oral advocacy and presentation skills;
- Learn and practice professionalism, including regular client communication, record-keeping, time-keeping, and meeting deadlines;
- Learn about the criminal justice process, from the initial investigation to post-conviction tools for relief;
- Participate in and reflect upon the work of criminal courts and the role of lawyers and investigators;
- Consider ethical issues that arise in post-conviction litigation;
- Enhance understanding of how principles learned in school are applied to real-world resolution of legal/factual issues.

III. How We Do What We Do-Use of Contract Funds

a. Clinical Instructor/Director

i. Client Services

Contract funds allow the clinic to maintain a full-time Clinical Instructor/Director to direct and teach the clinic. The Clinical Instructor/Director manages the clinic's docket, including: conducting initial screening of all incoming requests for assistance, assigning cases to students and supervising students' work on cases. As the case supervisor, the Clinical

Instructor/Director monitors communication between inmates and students, including reviewing all incoming and outgoing mail, working with students to identify cases where there may be viable claims of actual innocence, assisting students in gathering documentation and investigating cases. The Clinical Instructor/Director also acts as a liaison to the public by responding to inquiries from the general public seeking assistance with a claim of actual innocence.

The clinic now shares an Administrator with another law school clinic, resulting in the clinic having a part-time Administrator. No contract funds are used to compensate the clinic Administrator. He is compensated by the University of Texas School of Law using other funds. Converting the Administrator position to part-time from full-time required the Clinical Instructor/Director to spend more time working on administrative tasks including: daily mail intake, scanning, maintaining inmate files and entering inmate information into the clinic's electronic database. This has resulted in her having less time to dedicate to client services and teaching services.

ii. Teaching and Student Development

The Clinical Instructor/Director develops the syllabus for the classroom component of the clinic and prepares and conducts class lectures and discussions on topics related to actual innocence law, investigation and litigation. The clinic meets as a whole once each week for a classroom component and case discussion. The Clinical Instructor/Director maintains the schedule and syllabus for this weekly meeting. She also meets individually with each student at least once per week to discuss cases and strategy for investigation and litigation. She maintains course materials used by the clinic to teach the course. These course materials include: Wrongful Convictions: Cases and Materials; Actual Innocence: When Justice Goes Wrong &

How to Make it Right; Manual for Investigating Claims of Actual Innocence, Policy and Procedure Manual and Time Matters Manual (for case management software.) Prior to the beginning of each semester the Clinical Instructor/Director edits and updates all class materials. Finally, she works with other clinical professors to develop teaching strategies to improve the clinical education of students.

iii. Other Duties

Additionally, the Clinical Instructor/Director prepares required reports regarding cases reviewed/workload measures, addresses media questions regarding actual innocence law and claims, works with other law school departments regarding the clinic's function and supervises the Administrator.

b. Administrator

i. Client Services

The Administrator assists the Clinical Instructor/Director in responding to requests for assistance that come into the clinic office via telephone, email and walk-in. He also helps to maintain inmate files and translates documents and letters from and to Spanish.

ii. Teaching and Student Development

The Administrator manages the day-to-day operations within the clinic office. He assists students in the use of the clinic's electronic case management database and telephone system. He also assists students in handling correspondence to and from Spanish-speaking inmates.

iii. Other

The Administrator also manages the day to day office environment by monitoring the supplies needed for the office and working with accounting to pay for needed office expenses. Office supplies and related expenses are not paid for using contract funds. Such expenses are

paid for by the University of Texas School of Law using other funds. Each fiscal year the law school provides the clinic with \$3,000 to cover the cost of office supplies and related expenses. The majority of that fund is used to purchase letterhead, envelopes and postage.

c. Case Work

In addition to providing a salary and benefits for the Clinical Instructor/Director, contract funds were used to conduct actual innocence investigations. Contract funds paid for professional services related to the screening and initial investigation of cases originating from requests for assistance received in previous fiscal years. Contract funds also paid for travel expenses related to case investigations. Travel expenses included costs for students and the Clinical Instructor/Director to travel to various prison units across Texas to interview potential clients and witnesses. Each student enrolled in the clinic is required to travel to a prison unit to interview a potential client. These interviews are conducted in pairs to protect the integrity of the investigation and conserve grant funds. Finally, contract funds allowed the clinic to obtain necessary documents needed to make decisions on cases. Obtaining such documentation is integral to providing each inmate with a thorough and complete case review.

d. Chart-Use of Contract Funds*

Clinical Instructor/Attorney Salary & Benefits	\$68,000
DNA Testing	\$8,370
Professional Services	\$2,200
Travel	\$1,100
Records/Case Documents	\$4,100
Supplies	\$430
TOTAL	\$84,200**

*All values are approximate and based on receipts of funds spent.

**Includes \$4,200 carried forward from FY 2011-2012.

e. Chart-Available Non-Contract Funds*

Administrator Salary & Benefits (provided by UT School of Law)	\$20,000
Clinic Office Supply Fund (provided by UT School of Law)	\$3,000
One-time assistance with DNA Testing (provided by UT School of Law)	\$12,575**
Clinical Instructor Faculty Development Account (provided by UT School of Law)	\$2,000
Student Office Space (provided by UT School of Law)	NA
Clinical Instructor/Director office space (provided by UT School of Law)	NA
Computer Services and Technical Support	NA
TCAI emergency fund	\$4,000
TOTAL	\$41,575

*All values are approximate.

**UT School of Law provided non-renewable funds to cover DNA testing costs incurred by the Actual Innocence Clinic after contract funds had been exhausted.

IV. Why We Do What We Do-Program Accomplishments

a. Accomplishments Related to Indigent Defense

i. DNA Cases

The clinic is currently representing an inmate who was convicted in McLennan County in 1994 for Capital Murder involving a sexual assault and multiple victims. The client was sentenced to life in prison, and he is currently serving his sentence at the Eastham Unit in Lovelady, Texas. The client has filed previous DNA motions requesting DNA testing, however he has always been denied relief on the basis of the testimony against him by three co-defendants. The clinic has worked with local law firms (Andrews Kurth, LLP; Graves Dougherty Hearon & Moody; Baker Botts, LLP; and McDermott Will & Emery) who are each representing a co-defendant in the case. All parties worked together to file concurrent DNA motions. The DNA Motion was filed in the 54th District Court of McLennan County on February 8, 2012. A DNA hearing was held on August 31, 2012. On that date, Judge George Allen granted the petitioner's joint requests to have DNA testing conducted by Orchid Cellmark

on the evidence related to their cases. Orchid Cellmark has completed DNA testing on twelve pieces of evidence. Orchid Cellmark issued reports related to this DNA testing on January 8, 2013, March 8, 2013, April 10, 2013 and June 7, 2013. Following the report issued on June 7, 2013, DNA testing was put on hold due to lack of funding. The clinic had an outstanding balance of \$12,575 owed to Orchid Cellmark. The clinic had used all available contract funds. The clinic requested and received additional funds from University of Texas School of Law to pay the \$12,575 balance owed to Orchid Cellmark. The remainder of the DNA testing was put on hold until contract funds renewed and became available on September 1, 2013. The clinic's client and his three co-defendants are currently awaiting the results of that remaining DNA testing.

b. Accomplishments Related to Student Development

During fall semester 2012, the clinic included the usual twelve new law students and an additional two journalism students. During the fall semester 2012, the clinic also included five law students enrolled in the Advanced Clinic. Four of these students were continuing from their original enrollment in the spring 2012 semester, and one student was continuing from her original enrollment in the fall 2011 semester. During the spring semester 2013, the clinic included nine law students enrolled in the Advanced Clinic. All nine of these students were continuing from their original enrollment in the fall 2012 semester. The clinic was not offered for enrollment to new students because the Clinical Instructor/Director was on medical leave for half of the spring semester and there is no other instructor available to teach the course and supervise students when she is unavailable. Because the Clinical Instructor/Director was on medical leave for part of the spring semester the nine law students enrolled in the Advanced Clinic worked on preliminary research for cases that were on the waiting list to be investigated.

Students conducted internet research to gather facts and procedural history related to cases and then prepared Case Summary Memos to be reviewed by the Director when she returned from leave. The students prepared memos for approximately 350 cases. These memos will be used as the basis for deciding whether cases will be closed after screening or moved forward for investigation. These cases are included below in the number of innocence claims “awaiting investigation at the end of the period” because the Director has not yet reviewed all of the memos and made decisions related to the cases. However, because of the preliminary research and memos done by the advanced students the Director will be able to make decisions about these cases more quickly and thereby reduce the backlog of cases more quickly.

V. Contract Workload Measures

a. Chart-Contract Workload Measures

Total requests for assistance received	700
Requests for assistance based on new claim of actual innocence	345
# of innocence claims screened	230
# of innocence claims closed after screening	132
# of innocence claims closed after investigation	61
# of innocence claims with legal remedy pursued	0
# of innocence claims with relief granted	0
# of innocence claims with relief denied	0
# of innocence claims under active investigation at end of period	288
# of innocence claims awaiting investigation at end of period	804
# of law student participating in project	17
# of hours worked by law students	1998
# of students from other fields of study participating in project	2
# of hours worked by students from other fields of study	0

b. Summary of Innocence Claims with Legal Remedy Pursued

The clinic is currently representing an inmate who was convicted in McLennan County in 1994 for Capital Murder involving a sexual assault and multiple victims. The client was sentenced to life in prison, and he is currently serving his sentence at the Eastham Unit in

Lovelady, Texas. The client has filed previous DNA motions requesting DNA testing, however he has always been denied relief on the basis of the testimony against him by three co-defendants. The clinic has worked with local law firms (Andrews Kurth, LLP; Graves Dougherty Hearon & Moody; Baker Botts, LLP; and McDermott Will & Emery) who are each representing a co-defendant in the case. All parties worked together to file concurrent DNA motions. The DNA Motion was filed in the 54th District Court of McLennan County on February 8, 2012. A DNA hearing was held on August 31, 2012. On that date, Judge George Allen granted the petitioner's joint requests to have DNA testing conducted by Orchid Cellmark on the evidence related to their cases. Orchid Cellmark has completed DNA testing on twelve pieces of evidence. Orchid Cellmark issued reports related to this DNA testing on January 8, 2013, March 8, 2013, April 10, 2013 and June 7, 2013. Following the report issued on June 7, 2013, DNA testing was put on hold due to lack of funding. The clinic had an outstanding balance of \$12,575 owed to Orchid Cellmark. The clinic had used all available contract funds. The clinic requested and received additional funds from University of Texas School of Law to pay the \$12,575 balance owed to Orchid Cellmark. The remainder of the DNA testing was put on hold until contract funds renewed and became available on September 1, 2013. The clinic's client and his three co-defendants are currently awaiting the results of that remaining DNA testing.

c. Summary of Innocence Claims with Relief Granted

The clinic did not have any cases where relief was granted during this fiscal year.

d. Summary of Innocence Claims with Relief Denied

The clinic did not have any cases where relief was denied during this fiscal year.

VI. Conclusion

As indicated by the above work measures, the clinic used contract funds to provide post-conviction case review to hundreds of incarcerated individuals that would not otherwise have access to attorney services. The clinic's rigorous screening process permits an economical review of innocence claims by utilizing the skills of student attorneys who receive academic credit rather than payment, limiting the investment of resources required for investigation to those individuals with colorable claims of innocence, and further limiting litigation to those claims that present strong evidence warranting relief on the basis of innocence.

The limited number of claims that survive the screening process services the Texas criminal justice system in two ways. First, the screening process shields the courts from inappropriate motions for DNA testing under Article 64 of the Code of Criminal Procedure and writs of habeas corpus based on actual innocence that are without merit. In addition, providing a mechanism to review claims of innocence protects the integrity of the criminal justice system by putting to rest unfounded claims, while simultaneously overturning convictions of the truly innocent.